

Assembly Bill No. 3155

CHAPTER 939

An act to add Section 799 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 25, 1996. Filed
with Secretary of State September 26, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3155, Martinez. Public utilities: rights.

Under existing law, the Public Utilities Commission is vested with regulatory authority over public utilities.

Under existing law, public utilities and other service suppliers are required to bill their customers for various taxes imposed by public entities and remit the revenues from those taxes that are collected to the public entity.

This bill would provide that the public utility or other service supplier shall not be liable to any customer as a result of collecting the tax, and would grant various rights to, and impose various requirements on, public utilities and other service suppliers and impose new duties on local agencies with respect to the imposition, repeal, or collection of those taxes. The imposition of the new duties on local agencies would constitute a state-mandated local program.

Since existing law makes any public utility, as defined, and any corporation other than a public utility, that violates the Public Utilities Act guilty of a misdemeanor, and the provisions of the bill would be within the act, this bill would also impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions, but no other reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares as follows:

(a) Certain public utilities and other service suppliers operating in the State of California are required to collect taxes imposed on their customers by local jurisdictions and to remit those taxes to the local jurisdictions.

(b) The decision of the California Supreme Court in *Santa Clara County Transportation Authority v. Guardino*, 11 Cal. 4th 220, as modified on denial of rehearing 12 Cal. 4th 344e, upholds the legality of Proposition 62.

(c) As a consequence of the *Guardino* decision there is uncertainty concerning the legality of taxes imposed by certain local jurisdictions on customers of public utilities and other service suppliers.

(d) Public policy will be served by clarifying the duties and responsibilities of public utilities and other service suppliers.

SEC. 2. Section 799 is added to the Public Utilities Code, to read:

799. (a) With respect to all taxes enacted by any local jurisdiction, including any city, county, or city and county, including a chartered city or county, any district, including an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries, or any public or municipal corporation, and imposed on the customers of public utilities or other service suppliers, which taxes have been collected by the public utilities and other service suppliers and remitted to the local jurisdiction all of the following shall apply:

(1) The public utility or other service supplier shall have no duty to independently investigate or inquire with the local jurisdiction concerning the validity of the tax ordinance.

(2) In connection with any actions or claims relating to or arising from the invalidity of the tax ordinance, in whole or in part, the public utility or other service supplier shall not be liable to any customer as a consequence of collecting the tax.

(3) In the event a local jurisdiction is ordered to refund the tax, it shall be the sole responsibility of the local jurisdiction to refund the tax. Unless a public utility or other service supplier is reimbursed by the local jurisdiction for the actual cost of assisting the local jurisdiction, including, but not limited to, calculating or verifying refunds, distributing refunds, providing data, or providing data processing assistance, the public utility or other service supplier shall not be required to assist the local jurisdiction to refund the tax, including, but not limited to, calculating or verifying refunds, distributing refunds, providing data, or providing data processing assistance.

(4) In any action seeking to enjoin collection of taxes imposed on customers of utilities or other service suppliers and collected by the utilities or other service suppliers, in any action seeking declaratory relief concerning the taxes, in any action seeking a refund of the taxes, or in any action seeking otherwise to invalidate the taxes, the sole necessary party defendant in the action shall be the local jurisdiction on whose behalf the taxes are collected and the public utility or other service supplier collecting the taxes shall not be named as a party in the action.

(5) If a local jurisdiction repeals the tax, reduces an existing tax rate, changes the tax base, or makes any other changes to the tax that would affect the collection and remittance of the tax, the local jurisdiction shall submit, on and after the effective date of the enactment of the change, a written notification and supply all requisite information to the public utility or service supplier, in accordance with the procedures established by the public utility or service supplier. The public utility or other service supplier shall not be required to implement the changes any earlier than 60 days from the date on which the public utility or other service provider receives the written notification and all other information required by the public utility or other service supplier. If the 60th day is not the first day of a month, then the public utility or other service provider shall implement the changes on the first day of the month following the month in which the 60th day occurs.

(6) If a local jurisdiction adopts a new tax, the local jurisdiction shall submit, on and after the effective date of the adoption of the new tax, a written notification to the public utility or other service supplier, in accordance with procedures established by the public utility or other service supplier, requesting that the tax be collected. The public utility or other service supplier shall not be required to begin collecting the tax any earlier than 90 days from the date on which the public utility or other service provider receives written notification and all other information required by the public utility or other service supplier. If the 90th day is not the first day of a month, then the public utility or other service provider shall begin the tax collection on the first day of the month following the month in which the 90th day occurs. Nothing in this section shall be construed to prevent the public utility or other service provider from beginning the tax collection at an earlier date.

(b) The Legislature finds and declares that the limitations imposed by this section constitute an issue of statewide concern. The Legislature further finds and declares that the limitations imposed by this section are not municipal affairs as that term is used in Article XI of the California Constitution. Therefore, it is the intent of the Legislature that the limitations imposed by this section apply to all cities, counties, and cities and counties, including chartered cities and chartered counties, any district, including an agency of the state,



formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries, and any public or municipal corporation.

SEC. 3. The enactment of paragraphs (1), (2), (3), and (4) of subdivision (a) of Section 799 of the Public Utilities Code made by Section 3 of this act does not constitute a change in, but is declaratory of, existing law.

SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

No other reimbursement is required by other provisions of this act pursuant to Section 6 of Article XIII B of the California Constitution because the only other costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

